

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE                   §  
PETITION OF JAMES A. WILSON   § No. 557, 2009  
FOR A WRIT OF MANDAMUS           §

Submitted: October 2, 2009  
Decided: October 13, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 13<sup>th</sup> day of October 2009, it appears to the Court that:

(1) The petitioner, James A. Wilson, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus<sup>1</sup> to compel the Department of Correction to re-calculate his sentence. The State of Delaware has filed an answer requesting that Wilson's petition be dismissed. We find that Wilson's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) Wilson, a prison inmate, was convicted in 2001 of Trafficking in Cocaine and other related drug offenses in Superior Court Criminal Identification Number 9912006359. He was sentenced to 12 years of Level V incarceration, to be suspended after 10 years for probation. On August 11, 2009, Wilson filed a motion for sentence modification in the Superior Court, claiming that the Department of Correction had erred in calculating

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<sup>1</sup> Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

his sentence. The Superior Court's order denying the motion was docketed on August 28, 2009. Instead of filing an appeal from that decision, Wilson filed the instant petition for a writ of mandamus.<sup>2</sup>

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.<sup>3</sup> As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.<sup>4</sup>

(4) There is no basis for the issuance of a writ of mandamus in this case. First, the original jurisdiction of this Court to issue a writ of mandamus encompasses only those instances in which the respondent is a trial court or a judge of that court.<sup>5</sup> Wilson's petition, which appears to be directed to officials of the DOC must, therefore, be dismissed. Second, even if it is assumed that his petition is directed to the Superior Court, Wilson has not demonstrated that the Superior Court has arbitrarily failed or refused to

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<sup>2</sup> Wilson's initial petition, filed on September 24, 2009, requested that the writ be directed to officials of the Department of Correction ("DOC"). On September 25, 2009, Wilson filed an "amended" petition, requesting that the writ be directed to the Superior Court. On October 7, 2009, after the State had filed its answer and motion to dismiss, Wilson filed another "amended" petition, again requesting that the writ be directed to officials of the DOC.

<sup>3</sup> *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

<sup>4</sup> *Id.*

<sup>5</sup> *In re Hitchens*, 600 A.2d 37 (Del. 1991).

perform a duty clearly owed to him and that he has no other adequate remedy. On that basis, too, Wilson's petition must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice